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C O N F I D E N T I A L SECTION 01 OF 03 LJUBLJANA 000358

SIPDIS

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SUBJECT: SLOVENIA-CROATIA: NOW THE HARD PART

REF: LJUBLJANA 347 AND PREVIOUS

Classified By: CDA Brad Freden, E.O. 12958, reasons 1.4(b) and (d)

[1](#)1. (U) This message contains an action request. Please see paragraph 12.

SUMMARY

[1](#)2. (C) The signing of the historic border arbitration agreement November 4 by the Prime Ministers of Slovenia and Croatia is just the first step in a complex domestic process that will challenge Prime Minister Pahor and his government as they seek ratification of the politically sensitive agreement. The PM's greatest challenge will come from opposition leader Janez Jansa, who sees the agreement as flawed and Pahor as politically vulnerable. A Constitutional Court review and some form of a referendum will delay and further complicate the process, making final ratification unlikely before late winter or even early spring next year. As Prime Minister Pahor's government moves forward on the arbitration agreement, the United States will need to continue engaging the Slovenian government, opposition and public to ensure successful ratification of the agreement. Assistance from EU member states and conservative European politicians will be important in convincing Jansa to moderate his opposition. End summary.

BACKGROUND

[1](#)3. (SBU) After a long slog of negotiations and heated domestic debates, on November 4 Prime Minister Borut Pahor and his Croatian counterpart Jadranka Kosor signed an arbitration agreement which is expected to bring a solution to an 18 year old border dispute which stems from the dissolution of the former Yugoslavia. Slovenia's Ministry of Foreign Affairs praised the historic agreement, with a senior official saying that once the agreement was ratified by both parliaments, Slovenia and Croatia's border dispute would essentially be resolved. However, the signing of the arbitration agreement by both Prime Ministers is just the first step. Both governments now have to take the agreement to their respective parliaments for ratification. Prime Minister Pahor faces a tough battle in Parliament and will need to convince fence sitters within his own coalition that the arbitration agreement is ultimately in Slovenia's best interests. He has staked his political future on a successful outcome. The PM will also have to sell the agreement to the Slovenian public who will likely vote on it during a referendum. In a country where referendums are a popular political tool and voter turnout tends to be low, Pahor will need an aggressive public relations strategy to ensure that those in support of the agreement come out in force to vote for its passage.

RECENT DEVELOPMENTS

[1](#)4. (SBU) On November 17, the government endorsed the text of

the arbitration agreement and sent it to Parliament for ratification. It also endorsed the PM's proposal to submit the agreement to Slovenia's Constitutional Court for review. The government has asked the Court to review only one part of the agreement: Article 3(a) which tasks the arbitration tribunal to rule on the land and sea border. The Court will need to rule on the compatibility of the arbitration agreement's 3(a) with Article 4 of the Constitution which says that "Slovenia is a territorially unified and indivisible state" and the text of the Basic Constitutional Charter which states "the border between the Republic of Slovenia and the Republic of Croatia is that which existed between those two Republics within the SFRY as previously constituted."

15. (C//NF) Contrary to earlier expectations, the government did not ask the Court to rule on whether ratification requires a simple or two-thirds majority, a decision which the opposition immediately criticized. However, Constitutional Court Justice (and former Ambassador to the United States) Ernest Petric told CDA November 18 that the court could choose to rule on this question, citing the principle of connexity. Petric did little to conceal his view that the arbitration agreement should have a two-thirds majority, saying that such important decisions should be based on broad consensus, "not passed by one or two votes."

16. (SBU) Parliament will wait to take any further action on ratifying the agreement until it hears back from the Court. It is unclear at this point how long the Court will take to conclude its review, but all indications are that this process will take weeks, possibly months. To speed this

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process up, Prime Minister Pahor has specifically requested the Court to make this review their top priority, but no one expects a decision before the beginning of next year. If the Court gives its green light, Parliament would then vote on ratification. If the Court were to find the agreement unconstitutional -- an unlikely worst-case scenario -- the government would face two options; propose a constitutional amendment or withdraw from the agreement and propose new border negotiations.

17. (SBU) Also on November 17, the government adopted its own statement on the arbitration agreement in response to the earlier unilateral statement issued by Croatia. While the full text is yet to be released, the government's website issued the following Slovene language statement: (begin unofficial translation) "The Republic of Slovenia declares in accordance with international law that the Croatian unilateral statement given in connection with the arbitration agreement does not have any effect on its contents and sees the November 9, 2009 statement by the Republic of Croatia as unacceptable and without any effect on further procedures. The Republic of Slovenia declares that the task of the Arbitral Tribunal is to determine the territorial contact of the territorial sea of the Republic of Slovenia with the open sea (junction of Slovenia with the open sea), therefore preserving the right of Slovenia to the junction with the open sea that Slovenia had on the day of its independence on June 25, 1991. The Republic of Slovenia also declares the arbitration agreement is to be defined in accordance with the common meaning of terms in the provisions of the agreement." (End unofficial translation).

REFERENDUM -- NOT IF, BUT WHEN AND IN WHAT FORM?

18. (SBU) Once the court gives the go ahead (barring no constitutional problems), the government can then call for a consultative referendum, an action which it has already endorsed. Voting can only take place after a 30 day period passes, and must happen within one year. A simple majority in Parliament (46 of 90) is needed to approve the referendum, which is ultimately non-binding. Pahor has already publicly stated that he would like the consultative referendum to pose

a very general question, perhaps as simple as "do you support the arbitration agreement?" This is most likely a tactical move on Pahor's part. The opposition could theoretically call for a legally binding legislative referendum after ratification, but only if it asked a different question, as Slovenian law does not permit two referendums on the same question within one year. By making the consultative referendum question sufficiently general, Pahor can preempt the opposition by not allowing them much wiggle room to proffer a new question on the agreement.

19. (C) In fact, the biggest obstacle facing the agreement on the Slovenian side is the leader of the largest opposition party, former Prime Minister Janez Jansa. Jansa will likely continue to severely criticize Pahor and the government, ostensibly because the agreement excludes the principle of "ex aequo et bono" -- the power of the arbitrators to dispense with consideration of the law and consider solely what they see to be fair and equitable in the case at hand -- and because the tribunal's decision will come after Croatia is a member of the EU. Jansa is unlikely to publicly change his position and has already said numerous times that he is in favor of a subsequent legislative referendum on the agreement as soon as it is ratified. When CDA recently met with Jansa's primary foreign policy advisor (and former Foreign Minister) Dmitrij Rupel, Rupel complained about the government's failure to consult with the opposition and noted his party's fears that Croatia would not implement the arbitration tribunal's decision if it lost. Rupel also told CDA that the SDS was disappointed with the new timeline, which meant that the arbitration tribunal's decision would come only after Croatia signed its EU accession agreement. In response, CDA made it very clear to Rupel (and by proxy to Jansa) that the United States would be extremely disappointed if the Slovene Democratic Party (SDS) was to blame for blocking the arbitration agreement.

COMMENT: A ROLE FOR THE UNITED STATES

110. (C) Our public maneuvering room is limited by the sense among some parts of the Slovenian public and political elite that Washington pressured Ljubljana into making concessions to Croatia. We will need to avoid playing into that perception and the belief among some that the U.S. is willing to sacrifice Slovenia's interests in order to ensure Croatia's quick entry into the EU. Senior contacts in the MFA and Prime Minister's Office have privately cautioned us about the possible negative consequences if we were to take a

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very public stance on the arbitration agreement -- we could come across as meddling in Slovenia's internal affairs. Until the agreement is ratified by both parliaments, our public message should remain one of quiet support for the agreement and its ratification. The Commission and the Presidency are in many ways better positioned to carry the public diplomacy water, though we have few illusions that they will. Brussels and Stockholm should be conveying the message that the arbitration agreement is good for Slovenia, good for Croatia and good for Europe.

11.(C) While his substantive grievances may be real, Jansa is also clearly playing politics. His goal is to weaken Pahor's government and embarrass the PM personally, perhaps setting the stage for early elections. He seems willing to sacrifice the arbitration agreement on the altar of his own ambition. Our goal is to convince him that the price for doing so would be too high. Slovenian officials welcome our engagement with Jansa. We will continue to engage him and his surrogates privately. However, our chances for success will increase dramatically if we convince our European partners to engage. We need help from EU member states and conservative European politicians who know Jansa personally. Jansa listens to and respects German Chancellor Merkel perhaps more than any other European leader, and Merkel is on record as supporting Croatia's accession as soon as possible.

Jansa's SDS is also a member of the European Peoples Party group, which supports Croatia's EU membership. Jansa needs to hear the same message from Washington, Berlin and Brussels: while this may not be "the best" agreement, it is certainly a good agreement. More importantly, it is the only agreement on the table. If it fails, Croatia will either join the EU with the border issue unresolved, or Slovenia will block its neighbor's accession indefinitely. The later outcome is unacceptable to the international community and detrimental to Slovenia's own interests. It will leave Slovenia isolated. If he consistently hears the same message from not only Washington but also his conservative European friends, Jansa may be convinced to moderate his position.

12.(C) Action request: Post requests Department engage like-minded Member States -- and especially the Germans -- with the goal of convincing EPP politicians and MEPs to lobby Jansa on behalf of the agreement. End action request.

FREDEN